

FEDERAL MARITIME COMMISSION

WASHINGTON, D.C.

DOCKET NO. 15-11

IGOR OVCHINNIKOV, ET AL

v.

MICHAEL HITRINOV ET AL

RESPONDENTS' MOTION FOR LEAVE TO REPLY

Pursuant to FMC Rules 69 and 71, Specially-Appearing Respondents move for leave to file a brief reply – no more than three substantive pages – to Complainants' Opposition to Respondents' Motion to Consolidate.¹ Rule 71(c) allows the filing of such a reply in “extraordinary circumstances.” The extraordinary circumstances justifying a reply here are the inclusion in Complainants' Opposition of two claims that are central to the opposition, but could not have been anticipated in Respondents' Motion because they are manifestly wrong. Those claims are as follows:

1. Complainants assert that they may be prejudiced by limitations on discovery if the two proceedings are consolidated. Under the explicit terms of the FMC's rules, however, there is to be no discovery in Docket No. 1953(I). Complainant opted to file his Complaint pursuant to the FMC's Informal Rules in Subpart S, apparently in order to be on a “separate track” (according to Complainant's counsel). The track he has chosen, however, does not provide for discovery, and indeed expressly excludes it. 46 C.F.R.

¹ The parties attempted to confer on this motion, but time constraints made that impossible.

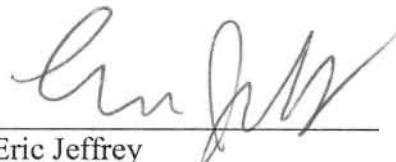
502.305. Even if Respondents were to deny consent to informal resolution (as expected), that would merely move the Complaint to Subpart T, which likewise excludes discovery. 46 C.F.R. 502.321.

2. Complainants assert hypothetically that grant of a default judgment would render Respondents' motion moot. That is obviously untrue, as consolidation would still be relevant to filing Exceptions with the Commission.

CONCLUSION

For the foregoing reasons, Specially-Appearing Respondents request leave to file a brief reply within the above-stated page limits.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Eric Jeffrey", written over a horizontal line.

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